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Federal Personnel Manual System

FPM Letter 338-9

Published in advance of incorporation in FPM Chapter 338

RETAIN UNTIL SUPERSEDED

SUBJECT: Elimination of Chapter 271; Revision of Guidance on Training Agreements and Superior Qualifications Appointments

Washington, D. C. 20415
October 14, 1980

Heads of Departments and Independent Establishments:

1. Attached is revised guidance on the authorities for training agreements and superior qualifications appointments. The information contained in the attachments will be incorporated into the Federal Personnel Manual within the next few months. In the meantime the material in this letter should be used instead of that now contained in chapter 338, subchapter 6 and chapter 271, subchapter 7.

2. Major changes include:

- Provision for delegation agreements under both authorities;
- Expanded discussion of what constitutes "superior qualifications", "existing pay" and "special need of the Government";
- Statement of all purposes which may be served by training agreements; and
- Expanded discussion of how training agreements relate to appointing authorities, merit promotion and qualifications requirements.

3. As part of the FPM Update Project, we propose to eliminate chapter 271 and distribute its contents to other chapters. The material on training agreements will be incorporated in chapter 338. (A complete breakdown of the proposed restructuring of chapter 271 appears in FPM Letter 271-6 .)

Jule Sugarman

Jule M. Sugarman
Deputy Director

Attachments

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Inquiries: (On elimination of chapter 271) Office of Policy Analysis and Development, Staffing Services, 632-6817; (on superior qualifications appointments and training agreements) Inservice Placement Branch, 632-6000

Code: 338-Qualification Requirements (General)

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(For interim use pending publication in FPM.)

APPOINTMENTS ABOVE THE MINIMUM BECAUSE OF SUPERIOR QUALIFICATIONS

1. SCOPE

The priniciples summarized in this subchapter are derived from sections 5333 and 5334 of title 5, United States Code, which authorize appointments to positions at grades GS-11 and above at rates higher than the minimum rate for the grade when the candidate has superior qualifications for the position, and from sections 531.201 and 531.203(b) of the regulations issued by OPM under these provisions.

2. AUTHORITY

a. Use of authority for new appointments and reemployment. An agency may make a superior qualifications appointment under this authority by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days since his/her last period of Federal employment or employment by the Government of the District of Columbia other than (a) employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code, (b) employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program or effected as part of a predoctoral or postdoctoral training program during which the employee received a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completion of certain academic requirements for an advanced degree, (c) employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service, (d) employment which is neither full-time employment nor the principal employment of the candidate, or (e) employment under the provisions of the Intergovernmental Personnel Act.

b. Positions with special rate ranges. This authority may also be used for General Schedule positions for which special rate ranges have been established under authority of section 5303 of title 5, United States Code, and rates within the special rate ranges may be used in fixing the appointee's pay upon approval by OPM or by an agency acting under an agreement with OPM.

c. Merit pay positions. This authority may also be used for positions covered by the Merit Pay system. In these cases, the pay rate requested should be that of the appropriate step of the applicable General Schedule grade.

3. REQUIREMENTS AND CRITERIA

a. Prior approval. In all cases when an agency wishes to make a superior qualifications appointment above the minimum rate under this authority, prior approval must be obtained from OPM or from an authorized agency official acting under an agreement with OPM. Furthermore, agencies may not appoint a candidate at the first step of the grade and then ask for approval to change the appointment to a higher step. The statutory authority is not appropriate after the candidate enters on duty, and there is no provision in the law or regulations for retroactive approval. Selecting officials should be cautioned against making firm salary commitments to prospective appointees before the required approval is obtained and should be advised to allow sufficient time for action on the advanced rate requests when establishing reporting dates for individuals for whom advanced rates are requested.

b. General considerations. The prime consideration in using this authority is to be able to meet the needs of the Government by giving agencies some flexibility in bargaining with individual candidates. In determining whether to request authority to make use of this flexibility in fixing a prospective appointee's pay, agencies should keep in mind that pay rates above the minimum are intended to be the exception, not the rule. It is expected that extensive use will not be made of this authority. Instead, it is expected that most candidates will be appointed at the minimum rate of the grade. A special rate may be appropriate, however, to reflect the conditions discussed below.

c. Conditions of use.

1. Qualifications of the candidate. Unusually high qualifications means qualifications of a candidate which are markedly superior to those which could be expected of a well-qualified candidate for the position to be filled. Unique qualifications means qualifications of a candidate which are a rare combination of education and experience immediately pertinent to the position. In determining what would be expected of a well-qualified candidate and what constitutes unusually high or unique qualifications, an agency should not apply an absolute standard, but should make a realistic assessment of the overall quality of candidates available in the specialty field of the position and the qualities which would distinguish the best prospects for the position being filled. If many applicants showed high-level experience or education directly pertinent to the position, a superior candidate might be expected to have outstanding reputation among others in the field and to have advanced degrees, published articles, unusual skills, or interdisciplinary training in the specific projects or programs treated by the position. On the other hand, when there is a shortage of qualified candidates in a particular occupation, a basically qualified candidate may be found superior without having advanced degrees or unusual attainments, based on a finding that he/she is better able to perform the needed work than other candidates who were recruited or who could reasonably be expected to respond to renewed recruiting efforts. In an emerging specialty where persons with directly pertinent formal education or high-level experience do not exist, a candidate with related experience or unusually high attainment in the broad occupational field (e.g. management, law, physics), or with demonstrated ability to adapt to different subject-matter specialties, may be found to have superior qualifications. The qualifications of the candidate are only one factor which must be considered as part of a total picture.

2. Existing pay. One of the factors to be considered when deciding whether to request an advanced rate for a candidate is the existing pay which the candidate would have to forfeit by accepting Federal employment. Existing pay includes the candidate's actual income from his/her present position and from any outside employment which forms a regular, continuning portion of the candidate's total income and which the candidate will not be able to continue as a Federal employee. (Actual income for this purpose does not include projected or annualized earnings higher than the candidate actually receives, unless such projections are supported by firm offers. For example, a candidate who is paid on a 10-month basis cannot be credited with 12 times his or her monthly salary. A candidate who works 20 hours a week cannot be credited with double his or her actual pay as the 40-hour equivalent unless the candidate has an offer to work full time. A consultant who has had a single contract or assignment at a rate significantly higher than his or her previous earnings may not be credited with annual income based on that rate unless he or she has other offers of assignments at the same rate.) Current bona fide offers of employment at a higher rate than the candidate's existing salary may also be considered. While, in a few instances, it may be appropriate to consider the monetary value

of fringe benefits which are substantially superior to those offered by the Government, the Federal fringe package compares favorably to those available in the private sector so it is not expected that this will be a significant factor in most cases. The candidate's existing pay is only one factor to be considered; this factor and the candidate's superior or unique qualifications must be considered jointly.

3. Special need of the Government for the candidate's services. In extremely rare instances, an advanced hiring rate may be appropriate when the conditions discussed above are not strictly met, but when there is a need for the services of a particular candidate because his/her special experience, knowledge, or skills are essential to the accomplishment of a highly important agency program objective. In other words, it must be clearly demonstrated that a significant part of the agency's mission will have to be curtailed if the candidate is not hired. Mere inconvenience to the agency does not meet this criterion. Also, curtailment of a function at a single-agency activity would not justify approval of an advanced rate unless this function was a material part of a major agency program. For example, curtailment of hours at a health unit operated for the benefit of an agency's employees or dependents would not create a special need; but curtailment of hours at an Indian Health clinic operated by an agency with a primary responsibility for providing health care to Indians might constitute such a need.

d. Determining the rate. Because a conservative approach to pay setting is generally desirable, as a general rule agencies should not request authority to use a rate which is more than $5,000 above the candidate's existing pay. However, when justified by exceptional or unusual circumstances, the OPM or an agency, as authorized by a delegation agreement, may approve a higher rate than is provided for by the general rule. In no case may an advanced rate be approved to circumvent any other restriction. For example, an advanced rate may not be used to compensate for military retired pay forfeited under dual compensation law.

e. Relation to current employees. Before requesting an advanced rate for a new appointee, agencies should ensure that current employees will not be adversely impacted. In other words, it is important not to disrupt pay alignment of an organization just to hire a single individual if that individual does not truly meet the requirements for an advanced pay rate.

f. Using authority to recruit persons with Ph.D degrees. When candidates having recent Ph.D. degrees appropriate to the positions to be filled are found to have superior qualifications, these candidates may be currently unemployed, or may be employed at the university where they received the degree so that their incomes may be nonexistent or artificially low. In these cases, agencies should consider the number of offers which the individual has received and the rate at which Ph.D. degree holders are being paid in the candidate's field.

g. Procedures for requesting prior approval. Request for prior approval under this authority should be submitted only after it is determined that authority exists for the appointment either by virtue of the candidate's being within reach on a certificate of eligibles or having reinstatement or noncompetitive appointment eligibility if the position is in the competitive service, or by application of the procedures prescribed in Part 302 of the regulations if the position is in the excepted service. In agencies which have delegation agreements with OPM for the exercise of this authority, requests will be submitted to the official(s) designated in the agreement in accordance with procedures established by the agencies. Agencies which have not established delegation agreements with OPM, will submit requests for positions at GS-15 and below to the regional director in the OPM region which contains the area office which has examining jurisdiction over the position or, for excepted positions, to the region which would have examining jurisdiction if the positions were not excepted. (For attorney positions, requests should be sent to the regional or central office having geographic jurisdiction over the position.) For positions under the jurisdiction of the OPM central office, requests should be sent to the Deputy Associate Director for Staffing, Attention: Inservice Placement Branch,

OPM, Washington, D.C. 20415. For all positions at GS-16 and above, requests should be sent to the Assistant Director, Senior Executive Service, EPMD, OPM, Washington, D.C. 20415. Requests should include: (1) two copies of Standard Form 59, Request for Approval of Noncompetitive Action; and (2) one copy of all other supporting material including (a) the candidate's application, (b) Standard Forms 39, Certification Form, and 39A, Request and Justification for Selective Factors and Quality Ranking Factors, if appropriate, with notation of the disposition of each eligible on the certificate, such as declined or nonselected, (c) information about the position to be filled, including current position description, and the appointing authority used, (d) the rate which is requested and the basis for that rate, (e) a complete justification for the use of the authority, (f) a list of recruiting sources used, and (g) a comparison of the candidate's qualifications with those of others within reach on the certificate, or any who may have been determined to be among the best qualified by internal merit promotion procedures.

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TRAINING AGREEMENTS

1. INTRODUCTION

Development of employees through training is carried on by all Government departments and agencies as a continuing part of the management responsibility as discussed in Chapter 410, Training. It is only when training is to be used as a substitution for normal qualification standards requirements or as a basis for promotion under section 6-4c of chapter 300, or both, that formal agreement must be executed with the OPM or developed under the terms of a delegation agreement between the agency and the Office. This section covers only that small area of training which is conducted under such formal training agreements.

2. DEFINITION, PURPOSE AND JUSTIFICATION OF TRAINING AGREEMENTS

a. Purpose. A training agreement is a useful management tool for special recognition and advancement of persons with high potential in career fields essential to the effective accomplishment of agency mission. Although not required for such placement, a training agreement may also be a useful vehicle for preparing employees, who would otherwise be separated, for placement in another agency, as provided in subsection (b) of section 4103 of title 5, United States Code. A training agreement makes it possible to substitute intensive, accelerated training for a portion of the normal qualification requirements. Specifically, a training agreement can authorize the following:

(1) Waiver of qualification requirements for trainee positions to permit employees to enter the program;

(2) Credit of time spent in training at an accelerated rate for qualifications or time-in-grade purposes;

(3) Credit as specialized experience of rotational assignments outside the target occupation; and/or

(4) Extension of details up to the maximum limits provided under section 8-3 of chapter 300.

b. Need for prior approval. Since a training agreement is, in essence, a modification of qualification standards, the OPM or an agency acting under an agreement with OPM must review and approve the training plans before the trainees enter the training program. This review is to make certain that the training will, or can be predicted to, equip the candidate for promotion to perform higher level work (or in reassignments, to work in a different occupational area), even though he/she has not had the amount and kind of experience or education called for in the qualification standard.

c. Justification. Because an approved training agreement authorizes exceptions to requirements which are normally considered to be the minimum needed for successful performance, the agreement should be developed for a valid objective which serves the administrative interest of the agency. For example, an agreement involving exceptions to normal qualification requirements may be designed to increase effectiveness of personnel utilization by

broadening managerial skills, developing special skills needed in an emerging occupation, retraining employees whose positions are becoming obsolete because of technological advances, or creating career opportunities for lower level employees who demonstrate potential for more responsible work. An agreement involving an exception to normal time-in-grade requirements must be needed to permit recruitment and retention of qualified personnel in an occupation characterized by shortage of eligibles and must document scarcity of qualified personnel at the level at which employees will serve on completion of training under the agreement, difficulty in recruiting personnel at the trainee level in relation to the available labor supply and agency recruiting efforts, and difficulty in retaining personnel in the line of work covered by the training agreement.

3. DEVELOPMENT OF TRAINING AGREEMENTS

a. Comparison with other internal training programs. Training programs developed by agencies for their internal use should contain clear guides to the methods of selection of trainees, identification of positions to be filled under the program, nature of the training to be given, and the methods for evaluating the effectiveness of the training. (At the time the training programs are being developed, agencies should make sure the classifications of the trainee and target positions are current and accurate since both the planning and the success of the program are largely based on this assumption.) In developing programs utilizing formal training agreements, agencies should also consider the need to provide training or opportunity for movement to persons who already meet basic qualifications. This is particularly true when developing an agreement for upward mobility or cross training which will allow employees to move into new occupations. Making a training agreement the only avenue for such movement may have undesirable results: either fully qualified employees, who do not really need the training, may apply for the program and outrank in competition those for whom the training is designed; or, if fully qualified employees are bypassed for desirable assignments by those with lesser qualifications, morale may suffer and turnover may increase. Agencies should remember that a training agreement is only one staffing tool and must be used in connection with other methods to produce the best utilization of personnel.

b. Selection of trainees. (1) Sources of candidates. Candidates for a training program may come from within or outside the agency. However, first consideration should be given to those persons within the workforce who meet eligibility requirements for purposes of the training program. Generally, training agreements aimed at correcting staffing problems, such as underutilization of employees or overstaffing in a particular function or occupation, will limit competition to current employees, while agreements aimed at creating a pool of talent for administrative and managerial jobs may provide for consideration of eligibles from all sources. Whatever sources are used, consideration must be limited to candidates who are eligible for movement into the target positions, i.e. to career and career-conditional employees, to persons eligible for reinstatement or noncompetitive appointment, to persons within reach for appointment from competitive civil service registers, or to persons serving under excepted appointing authorities, such as veterans readjustment appointments or Schedule A appointments of the severely physically handicapped, which provide for conversion to competitive status and/or movement into competitive positions. A training agreement by itself does not constitute proper authority for movement of temporary or excepted employees into the competitive career service, and such employees may not be converted unless other legal authority exists for their movement.

(2) Qualification standards to be used. Depending on the purpose of the training program, trainees may be required to meet all or part of the published qualification standard for the trainee position, plus any additional requirements such as supervisory potential which may be appropriate for the trainee or target position, or may be rated solely on their potential to absorb the training and to succeed and progress in the target occupation. The training agreement cannot impose any form of positive education requirements except those already required by published qualification standards governing the trainee or target positions, nor can the agreement constitute proper authority to waive such requirements when contained in the applicable standards for target or trainee positions.

(3) Methods for selecting trainees. Methods for evaluating prospective trainees may include review of their training and experience (including that gained off the job through volunteer activities, union activities, etc.), supervisory evaluations, written tests, oral interviews, and assessment centers. All methods for evaluating and selecting trainees must conform to the requirements of merit promotion policy as described in chapter 335 and Supplement 335-1 and to the Uniform Guidelines for Employee Selection Procedures, i.e., they must be valid and job related. In particular, written tests must be used in accordance with the guidelines contained in Supplement 335-1. Service requirements beyond those specified in time-in-grade regulations and published qualification standards (e.g., requirements that employees have completed a specified amount of time in the agency, in their current grades or positions, or since their last formal training) may be imposed only if they clearly meet the tests of validity and job relatedness for the positions filled under the training agreement. Since training agreements are typically used to qualify employees for new career fields or new responsibilities, such administrative service requirements will very rarely be appropriate.

c. Content of the training program. The training program may include both on-the-job and formal training. However, trainees may not be required to complete or maintain a specified grade-point average in college courses other than courses required by a published qualification standard; establishment by agencies of such positive education requirements is prohibited by section 3308 of title 5, United States Code. Neither may trainees be required to take courses after working hours, as such required training would constitute uncompensated overtime, which is prohibited by the Fair Labor Standards Act. The content of the training program should be designed to supplement the trainees' present qualifications so that they will be able to perform the requirements of the target position at the end of the training program. At least 50 percent of the training must be in the target occupation or directly related fields. The entire program must be of sufficient length to accomplish this goal.

d. Credit for training. (1) Training may be credited at an accelerated rate only if it can be expected to quicken the rate of development of the trainee over that normally obtained from experience on the job. If the proposed training actually will reduce the time required to qualify a person with high learning ability to perform the duties of the target position, this training may be credited at a rate of no more than one month of training for two months of on-the-job performance. For purposes of time-in-grade requirements, training agreements which provide for accelerated promotions may not be used to permit consecutive promotions at an accelerated rate. For qualifications purposes, the training provided each employee under a training agreement must be at least half as long as the difference between the qualifications which that employee brings into the program and the qualifications required by the published standard for the target position. For example, if an employee who has completed 2 years of college but has held routine clerical positions is selected to train for a target position of Management Analyst, GS-7, the employee's education would substitute for 18 months of the

general experience required by the standard, and the employee would need to make up 18 months of general and 1 year of specialized experience. The employee's training time would, therefore, be at least 15 months.

(2) Training agreements may be used in conjunction with the General Amendment for Crediting Experience contained in the Handbook X-118 qualification standards. The General Amendment permits employees to qualify for positions for which they have demonstrated competence at the full performance level and have experience in closely related fields, even though they may not meet the full specialized experience requirement contained in the applicable standard. A training agreement which gives employees the opportunity to gain and demonstrate competence in occupations related to their own may be a useful tool for executive and managerial development. Although the General Amendment does not specify the length of time which must be spent in an occupation in order to demonstrate acceptable competence, assignments for this purpose made under a training agreement should be of sufficient length to ensure that the employee has the opportunity to perform all significant functions of the occupation, including those which occur at widely spaced intervals.

(3) Because training which justifies credit at an accelerated rate must be designed to include all essential knowledges, skills and abilities needed in a specific target position or occupation, completion of less than the full program of training cannot be assumed to equally enhance an employee's ability to learn and succeed in the target position. Therefore, the training agreement may be the basis for crediting qualifications or service at an accelerated rate only when making assignments to positions under the program; it may not provide accelerated credit for qualifications earned in training by anyone who leaves the program without reaching the target position.

e. Flexibility in the program. To avoid the necessity for minor amendments of training agreements, and to make known in advance to trainees the types of circumstances which might prolong their training, agencies may wish to include flexibility provisions which would make it possible to:

(1) Tailor, within the total length of the training program, the length and intensity of the subject matter to the individual needs of different trainees in terms of differences in their total backgrounds.

(2) Extend the length of the training program for a specific length of time, e.g., an additional 3-6 months, to cover contingencies such as:

-Trainee's inability to grasp a portion of the training given.

-Illness.

-Annual leave.

(3) Alter sequence of training to allow for learning experience to be responsive to actual work situations as they arise during the training period when conditions or experience indicates the desirability of these changes.

(4) Add or modify subject-matter material depending on technological changes, the needs of the agency and the trainees, and evaluation of experience with the training program.

f. Evaluation of trainees' progress. The training plan should provide definite means of evaluating the progress of each trainee upon completion of each major phase of the training or at regular time intervals to determine how well each phase has been learned and when the

trainee is able to perform in the target position. The final evaluation should contain information on such matters as trainee's overall progress, demonstrated ability to apply subject matter of the training, and capacity to perform assignments at a higher level of difficulty and/or with greater independence and responsibility, to support the decision made whether the trainee has satisfactorily completed the program and what personnel action is to be taken, e.g., promotion, reassignment, removal from the program. Because a downgrade to enter a training program is considered to be voluntary for merit promotion purposes, a training agreement may not provide for noncompetitive promotion of trainees who fail to complete the program successfully to their former grades or positions.

g. Time limit on training agreements. All training agreements approved by the Office of Personnel Management will expire automatically 2 years after the date of Office approval unless a shorter time limitation is specified. Training agreements approved by agencies under delegation agreements with OPM need not have a 2-year expiration date. However, to ensure periodic evaluation of training program effectiveness, such agreements should provide for review of the agreement and renewal or cancellation, as appropriate, at regular intervals.

4. RECORD OF COMPLETION OF TRAINING

a. Employee personnel folder. A written record of satisfactory completion of training under an approved training agreement must be a part of each trainee's Official Personnel Folder to show that all of the terms of the training agreement have been met.

b. Training file. The training program file should contain a record of the actual training given to each trainee. This record should be maintained for a minimum of 2 years after the completion of training.

5. RELATED REQUIREMENTS AND REFERENCES

a. Requirements governing training. Training provided under a training agreement is subject to all requirements applicable to training generally. These requirements are contained in chapter 41 of title 5, United States Code, Executive Order 11348, Part 410 of OPM's regulations, and in various other statutes or policies (such as individual agencies' appropriations acts) which make specific provisions concerning training. Approval of a training agreement by OPM does not constitute either a direct or implied agreement that the proposed training meets these requirements; nor may approval of a training agreement by either OPM or an agency be the basis for waiver of any of these requirements.

b. Requirements governing promotions. A training agreement may be the basis for promotions as provided in subchapter 6 of chapter 300. An employee may be promoted a maximum of two grades (or equivalent) in 1 year solely as a result of training agreements. When the employee has had prior service which may be counted in determining eligibility for further promotion, promotions of more than two grades in 1 year may result. Also, an employee may have been promoted recently under another exception in subchapter 6 and that promotion plus promotions under training agreements may result in promotions of more than two grades in a 1-year period. The restriction in subchapter 5 of chapter 330, providing for a 3-month waiting period after the employee's latest nontemporary competitive appointment, applies to promotion under training agreements.

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c. Restrictions on "quality graduates." Newly hired grade GS-7 employees who qualify for that grade on the basis of college graduation alone under the superior academic achievement standard will need to be trained in an intensive, carefully planned manner. Because these employees have had no work experience or graduate study on which to build, they typically need to remain at the GS-7 level for a minimum of a full year in order to permit the full development of their ability to perform at the GS-9 level. Therefore, training agreements may not be approved which will have the effect of authorizing promotion of these employees from GS-7 to GS-9 in less than the usual 1-year period of GS-7 experience. The Office will allow exceptions to this policy only in rare cases when needed to overcome unusually severe recruiting and retention problems. If a program permitting accelerated promotion of quality graduates is authorized, the agency must ensure that the classification of the trainee and target positions is current and accurate, that the plan provides definitive means for evaluating the progress of each trainee to determine when the trainee is able to perform in the target position, and that trainees are promoted to the GS-9 level only when they show clear evidence of the knowledges, skills and abilities required to perform at that level. Moreover, trainees should be advised that promotions are not automatic and are contingent upon fulfillment of the training objectives, which should include clear descriptions of the knowledges, skills and abilities to be acquired and the proficiency to be achieved.